SECOND DIVISION

[G.R. No. 141811. November 15, 2001]

FIRST METRO INVESTMENT CORPORATION, *petitioner*, *vs.* ESTE DEL SOL MOUNTAIN RESERVE, INC., VALENTIN S. DAEZ, JR., MANUEL Q. SALIENTES, MA. ROCIO A. DE VEGA, ALEXANDER G. ASUNCION, ALBERTO* M. LADORES, VICENTE M. DE VERA, JR., and FELIPE B. SESE, *respondents*.

D E C I S I O N

DE LEON, JR., *J.*:

Before us is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals[2] dated November 8, 1999 in CA-G.R. CV No. 53328 reversing the Decision[3] of the Regional Trial Court of Pasig City, Branch 159 dated June 2, 1994 in Civil Case No. 39224. Essentially, the Court of Appeals found and declared that the fees provided for in the Underwriting and Consultancy Agreements executed by and between petitioner First Metro Investment Corp. (FMIC) and respondent Este del Sol Mountain Reserve, Inc. (Este del Sol) simultaneously with the Loan Agreement dated January 31, 1978 were mere subterfuges to camouflage the usurious interest charged by petitioner FMIC.

The facts of the case are as follows:

It appears that on January 31, 1978, petitioner FMIC granted respondent Este del Sol a loan of Seven Million Three Hundred Eighty-Five Thousand Five Hundred Pesos (₱7,385,500.00) to finance the construction and development of the Este del Sol Mountain Reserve, a sports/resort complex project located at Barrio Puray, Montalban, Rizal.[4]

Under the terms of the Loan Agreement, the proceeds of the loan were to be released on staggered basis. Interest on the loan was pegged at sixteen (16%) percent per annum based on the diminishing balance. The loan was payable in thirty-six (36) equal and consecutive monthly amortizations to commence at the beginning of the thirteenth month from the date of the first release in accordance with the Schedule of Amortization.[5] In case of default, an acceleration clause was, among others, provided and the amount due was made subject to a twenty (20%) percent one-time penalty on the amount due and such amount shall bear interest at the highest rate permitted by law from the date of default until full payment thereof plus liquidated damages at the rate of two (2%) percent per month compounded quarterly on the unpaid balance and accrued interests together with all the penalties, fees, expenses or charges thereon until the unpaid balance is fully paid, plus attorneys fees equivalent to twenty-five (25%) percent of the sum sought to be recovered, which in no case shall be less than Twenty Thousand Pesos (₱20,000.00) if the services of a lawyer were hired.[6]

In accordance with the terms of the Loan Agreement, respondent Este del Sol executed several documents[7] as security for payment, among them, (a) a Real Estate Mortgage dated January 31, 1978 over two (2) parcels of land being utilized as the site of its development project with an area of approximately One Million Twenty-Eight Thousand and Twenty-Nine (1,028,029) square meters and particularly described in TCT Nos. N-24332 and N-24356 of the Register of Deeds of Rizal, inclusive of all improvements, as well as all the machineries, equipment, furnishings and furnitures existing thereon; and (b) individual Continuing Suretyship agreements by co-respondents Valentin S. Daez, Jr., Manuel Q. Salientes, Ma. Rocio A. De Vega, Alexander G. Asuncion, Alberto M. Ladores, Vicente M. De Vera, Jr. and Felipe B. Sese, all dated February 2, 1978, to

guarantee the payment of all the obligations of respondent Este del Sol up to the aggregate sum of Seven Million Five Hundred Thousand Pesos (₱7,500,000 00) each.[8]

Respondent Este del Sol also executed, as provided for by the Loan Agreement, an Underwriting Agreement on January 31, 1978 whereby petitioner FMIC shall underwrite on a best-efforts basis the public offering of One Hundred Twenty Thousand (120,000) common shares of respondent Este del Sols capital stock for a one-time underwriting fee of Two Hundred Thousand Pesos (₱200,000.00). In addition to the underwriting fee, the Underwriting Agreement provided that for supervising the public offering of the shares, respondent Este del Sol shall pay petitioner FMIC an annual supervision fee of Two Hundred Thousand Pesos (₱200,000.00) per annum for a period of four (4) consecutive years. The Underwriting Agreement also stipulated for the payment by respondent Este del Sol to petitioner FMIC a consultancy fee of Three Hundred Thirty-Two Thousand Five Hundred Pesos (₱332,500.00) per annum for a period of four (4) consecutive years. Simultaneous with the execution of and in accordance with the terms of the Underwriting Agreement, a Consultancy Agreement was also executed on January 31, 1978 whereby respondent Este del Sol engaged the services of petitioner FMIC for a fee as consultant to render general consultancy services.[9]

In three (3) letters all dated February 22, 1978 petitioner billed respondent Este del Sol for the amounts of [a] Two Hundred Thousand Pesos (₱200,000.00) as the underwriting fee of petitioner FMIC in connection with the public offering of the common shares of stock of respondent Este del Sol; [b] One Million Three Hundred Thirty Thousand Pesos (₱1,330,000.00) as consultancy fee for a period of four (4) years; and [c] Two Hundred Thousand Pesos (₱200,000.00) as supervision fee for the year beginning February, 1978, in accordance to the Underwriting Agreement.[10] The said amounts of fees were deemed paid by respondent Este del Sol to petitioner FMIC which deducted the same from the first release of the loan.

Since respondent Este del Sol failed to meet the schedule of repayment in accordance with a revised Schedule of Amortization, it appeared to have incurred a total obligation of Twelve Million Six Hundred Seventy-Nine Thousand Six Hundred Thirty Pesos and Ninety-Eight Centavos (₱12,679,630.98) per the petitioners Statement of Account dated June 23, 1980,[11] to wit:

STATEMENT OF ACCOUNT OF
ESTE DEL SOL MOUNTAIN RESERVE, INC.
AS OF JUNE 23, 1980

PARTICULARS	AMOUNT
Total amount due as of 11-22-78 per revised amortization schedule dated 1-3-78	₱7,999,631.42
Interest on ₱7,999,631.42 @ 16% p.a. from 11-22-78 to 2-22-79 (92 days)	327,096.04
Balance	8,326,727.46
One time penalty of 20% of the entire unpaid obligations under Section 6.02 (ii) of Loan Agreement	1,665,345.49
Past due interest under Section 6.02 (iii) of loan Agreement:	
@ 19% p.a. from 2-22-79 to 11-30-79 (281 days)	1,481,879.93
@ 21% p.a. from 11-30-79 to 6-23-80 (206 days)	1,200,714.10

Other charges publication of extra judicial foreclosure of REM made on 5-23-80 & 6-6-80 4,964.00

Total Amount Due and Collectible as of June 23, 1980 **₱12,679,630.98**

Accordingly, petitioner FMIC caused the extrajudicial foreclosure of the real estate mortgage on June 23, 1980.[12] At the public auction, petitioner FMIC was the highest bidder of the mortgaged properties for Nine Million Pesos (₱9,000,000.00). The total amount of Three Million One Hundred Eighty-Eight Thousand Six Hundred Thirty Pesos and Seventy-Five Centavos (₱3,188,630.75) was deducted therefrom, that is, for the publication fee for the publication of the Sheriffs Notice of Sale, Four Thousand Nine Hundred Sixty-Four Pesos (₱4,964.00); for Sheriffs fees for conducting the foreclosure proceedings, Fifteen Thousand Pesos (₱15,000.00); and for Attorneys fees, Three Million One Hundred Sixty-Eight Thousand Six Hundred Sixty-Six Pesos and Seventy-Five Centavos (₱3,168,666.75). The remaining balance of Five Million Eight Hundred Eleven Thousand Three Hundred Sixty-Nine Pesos and Twenty-Five Centavos (₱5,811,369.25) was applied to interests and penalty charges and partly against the principal, due as of June 23, 1980, thereby leaving a balance of Six Million Eight Hundred Sixty-Three Thousand Two Hundred Ninety-Seven Pesos and Seventy-Three Centavos (₱6,863,297.73) on the principal amount of the loan as of June 23, 1980.[13]

Failing to secure from the individual respondents, as sureties of the loan of respondent Este del Sol by virtue of their continuing surety agreements, the payment of the alleged deficiency balance, despite individual demands sent to each of them,[14] petitioner instituted on November 11, 1980 the instant collection suit[15]against the respondents to collect the alleged deficiency balance of Six Million Eight Hundred Sixty-Three Thousand Two Hundred Ninety-Seven Pesos and Seventy-Three Centavos (₱6,863,297.73) plus interest thereon at twenty-one (21%) percent per annum from June 24, 1980 until fully paid, and twenty-five (25%) percent thereof as and for attorneys fees and costs.

In their Answer, the respondents sought the dismissal of the case and set up several special and affirmative defenses, foremost of which is that the Underwriting and Consultancy Agreements executed simultaneously with and as integral parts of the Loan Agreement and which provided for the payment of Underwriting, Consultancy and Supervision fees were in reality subterfuges resorted to by petitioner FMIC and imposed upon respondent Este del Sol to camouflage the usurious interest being charged by petitioner FMIC.[16]

The petitioner FMIC presented as its witnesses during the trial: Cesar Valenzuela, its former Senior Vice-President, Felipe Neri, its Vice-President for Marketing, and Dennis Aragon, an Account Manager of its Account Management Group, as well as documentary evidence. On the other hand, co-respondents Vicente M. De Vera, Jr. and Valentin S. Daez, Jr., and Perfecto Doroja, former Senior Manager and Assistant Vice-President of FMIC, testified for the respondents.

After the trial, the trial court rendered its decision in favor of petitioner FMIC, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendants, ordering defendants jointly and severally to pay to plaintiff the amount of P6,863,297.73 plus 21% interest per annum, from June 24, 1980, until the entire amount is fully paid, plus the amount equivalent to 25% of the total amount due, as attorneys fees, plus costs of suit.

Defendants counterclaims are dismissed, for lack of merit.

Finding the decision of the trial court unacceptable, respondents interposed an appeal to the Court of Appeals. On November 8, 1999, the appellate court reversed the challenged decision of the trial court. The appellate court found and declared that the fees provided for in the Underwriting and Consultancy Agreements were mere subterfuges to camouflage the excessively usurious interest charged by the petitioner FMIC on the loan of respondent Este del Sol; and that the stipulated penalties, liquidated damages and attorneys fees were

excessive, iniquitous, unconscionable and revolting to the conscience, and declared that in lieu thereof, the stipulated one time twenty (20%) percent penalty on the amount due and ten (10%) percent of the amount due as attorneys fees would be reasonable and suffice to compensate petitioner FMIC for those items. Thus, the appellate court dismissed the complaint as against the individual respondents sureties and ordered petitioner FMIC to pay or reimburse respondent Este del Sol the amount of Nine Hundred Seventy-One Thousand Pesos (₱971,000.00) representing the difference between what is due to the petitioner and what is due to respondent Este del Sol, based on the following computation:[17]

A: DUE TO THE [PETITIONER]

Principal of Loan ₱7,382,500.00
Add: 20% one-time
Penalty 1,476,500.00
Attorneys fees 900,000.00 ₱9,759,000.00
Less: Proceeds of foreclosure
Sale 9,000,000.00
Deficiency ₱ 759,000.00

B. DUE TO [RESPONDENT ESTE DEL SOL]

Return of usurious interest in the form of:
Underwriting fee ₱ 200,000.00
Supervision fee 200,000.00
Consultancy fee 1,330,000.00
Total amount due Este ₱ 1,730,000.00

The appellee is, therefore, obliged to return to the appellant Este del Sol the difference of ₱971,000.00 or (₱1,730,000.00 less ₱759,000.00).

Petitioner moved for reconsideration of the appellate courts adverse decision. However, this was denied in a Resolution[18] dated February 9, 2000 of the appellate court.

Hence, the instant petition anchored on the following assigned errors:[19]

THE APPELLATE COURT HAS DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND WITH APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN IT:

a] HELD THAT ALLEGEDLY THE UNDERWRITING AND CONSULTANCY AGREEMENTS SHOULD NOT BE CONSIDERED SEPARATE AND DISTINCT FROM THE LOAN AGREEMENT, AND INSTEAD, THEY SHOULD BE CONSIDERED AS A SINGLE CONTRACT.

b] HELD THAT THE UNDERWRITING AND CONSULTANCY AGREEMENTS ARE MERE SUBTERFUGES TO CAMOUFLAGE THE USURIOUS INTEREST CHARGED BY THE PETITIONER.

c] REFUSED TO CONSIDER THE TESTIMONIES OF PETITIONERS WITNESSES ON THE SERVICES PERFORMED BY PETITIONER.

d] REFUSED TO CONSIDER THE FACT [*i*] THAT RESPONDENTS HAD WAIVED THEIR RIGHT TO SEEK RECOVERY OF THE AMOUNTS THEY PAID TO PETITIONER, AND [*ii*] THAT RESPONDENTS HAD ADMITTED THE VALIDITY OF THE UNDERWRITING AND CONSULTANCY AGREEMENTS.

e] MADE AN ERRONEOUS COMPUTATION ON SUPPOSEDLY WHAT IS DUE TO EACH PARTY AFTER THE FORECLOSURE SALE, *AS SHOWN IN PP. 34-35 OF THE ASSAILED DECISION*, EVEN GRANTING JUST FOR THE SAKE OF ARGUMENT THAT THE APPELLATE COURT WAS CORRECT IN STIGMATIZING [*i*] THE PROVISIONS OF THE LOAN AGREEMENT THAT REFER TO STIPULATED PENALTIES, LIQUIDATED DAMAGES AND ATTORNEYS FEES AS SUPPOSEDLY EXCESSIVE, INIQUITOUS AND UNCONSCIONABLE AND REVOLTING TO THE CONSCIENCE AND [*ii*] THE UNDERWRITING, SUPERVISION AND CONSULTANCY SERVICES AGREEMENT AS SUPPOSEDLY MERE SUBTERFUGES TO CAMOUFLAGE THE USURIOUS INTEREST CHARGED UPON THE RESPONDENT ESTE BY PETITIONER.

f] REFUSED TO CONSIDER THE FACT THAT RESPONDENT ESTE, AND THUS THE INDIVIDUAL RESPONDENTS, ARE STILL OBLIGATED TO THE PETITIONER.

Petitioner essentially assails the factual findings and conclusion of the appellate court that the Underwriting and Consultancy Agreements were executed to conceal a usurious loan. Inquiry upon the veracity of the appellate courts factual findings and conclusion is not the function of this Court for the Supreme Court is not a trier of facts. Only when the factual findings of the trial court and the appellate court are opposed to each other does this Court exercise its discretion to re-examine the factual findings of both courts and weigh which, after considering the record of the case, is more in accord with law and justice.

After a careful and thorough review of the record including the evidence adduced, we find no reason to depart from the findings of the appellate court.

First, there is no merit to petitioner FMICs contention that Central Bank Circular No. 905 which took effect on January 1, 1983 and removed the ceiling on interest rates for secured and unsecured loans, regardless of maturity, should be applied retroactively to a contract executed on January 31, 1978, as in the case at bar, that is, while the Usury Law was in full force and effect. It is an elementary rule of contracts that the laws, in force at the time the contract was made and entered into, govern it.[20] More significantly, Central Bank Circular No. 905 did not repeal nor in any way amend the Usury Law but simply suspended the latters effectivity.[21] The illegality of usury is wholly the creature of legislation. A Central Bank Circular cannot repeal a law. Only a law can repeal another law.[22] Thus, retroactive application of a Central Bank Circular cannot, and should not, be presumed.[23]

Second, when a contract between two (2) parties is evidenced by a written instrument, such document is ordinarily the best evidence of the terms of the contract. Courts only need to rely on the face of written contracts to determine the intention of the parties. However, this rule is not without exception.[24] The form of the contract is not conclusive for the law will not permit a usurious loan to hide itself behind a legal form. Parol evidence is admissible to show that a written document though legal in form was in fact a device to cover usury. If from a construction of the whole transaction it becomes apparent that there exists a corrupt intention to violate the Usury Law, the courts should and will permit no scheme, however ingenious, to becloud the crime of usury.[25]

In the instant case, several facts and circumstances taken altogether show that the Underwriting and Consultancy Agreements were simply cloaks or devices to cover an illegal scheme employed by petitioner FMIC to conceal and collect excessively usurious interest, and these are:

a) The Underwriting and Consultancy Agreements are both dated January 31, 1978 which is the same date of the Loan Agreement.[26] Furthermore, under the Underwriting Agreement payment of the supervision and consultancy fees was set for a period of four (4) years[27] to coincide ultimately with the term of the Loan Agreement.[28] This fact means that all the said agreements which were executed simultaneously were set to mature or shall remain effective during the same period of time.

b) The Loan Agreement dated January 31, 1978 stipulated for the execution and delivery of an underwriting agreement[29] and specifically mentioned that such underwriting agreement is a condition precedent[30] for petitioner FMIC to extend the loan to respondent Este del Sol, indicating and as admitted by petitioner FMICs employees,[31] that such Underwriting Agreement is part and parcel of the Loan Agreement.[32]

c) Respondent Este del Sol was billed by petitioner on February 28, 1978 One Million Three Hundred Thirty Thousand Pesos (₱1,330,000.00)[33] as consultancy fee despite the clear provision in the Consultancy Agreement that the said agreement is for Three Hundred Thirty-Two Thousand Five Hundred Pesos (₱332,500.00) per annum for four (4) years and that only the first year consultancy fee shall be due upon signing of the said consultancy agreement.[34]

d) The Underwriting, Supervision and Consultancy fees in the amounts of Two Hundred Thousand Pesos (₱200,000.00), Two Hundred Thousand Pesos (₱200,000.00) and One Million Three Hundred Thirty Thousand Pesos (₱1,330,000.00), respectively, were billed by petitioner to respondent Este del Sol on February 22, 1978, [35] that is, on the same occasion of the first partial release of the loan in the amount of Two Million Three Hundred Eighty-Two Thousand Five Hundred Pesos (₱2,382,500.00).[36] It is from this first partial release of the loan that the said corresponding bills for Underwriting, Supervision and Consultancy fees were deducted and apparently paid, thus, reverting back to petitioner FMIC the total amount of One Million Seven Hundred Thirty Thousand Pesos (₱1,730,000.00) as part of the amount loaned to respondent Este del Sol.[37]

e) Petitioner FMIC was in fact unable to organize an underwriting/selling syndicate to sell any share of stock of respondent Este del Sol and much less to supervise such a syndicate, thus failing to comply with its obligation under the Underwriting Agreement.[38] Besides, there was really no need for an Underwriting Agreement since respondent Este del Sol had its own licensed marketing arm to sell its shares and all its shares have been sold through its marketing arm.[39]

f) Petitioner FMIC failed to comply with its obligation under the Consultancy Agreement,[40] aside from the fact that there was no need for a Consultancy Agreement, since respondent Este del Sols officers appeared to be more competent to be consultants in the development of the projected sports/resort complex.[41]

All the foregoing established facts and circumstances clearly belie the contention of petitioner FMIC that the Loan, Underwriting and Consultancy Agreements are separate and independent transactions. The Underwriting and Consultancy Agreements which were executed and delivered contemporaneously with the Loan Agreement on January 31, 1978 were exacted by petitioner FMIC as essential conditions for the grant of the loan. An apparently lawful loan is usurious when it is intended that additional compensation for the loan be disguised by an ostensibly unrelated contract providing for payment by the borrower for the lenders services which are of little value or which are not in fact to be rendered, such as in the instant case.[42] In this connection, Article 1957 of the New Civil Code clearly provides that:

Art. 1957. Contracts and stipulations, under any cloak or device whatever, intended to circumvent the laws against usury shall be void. The borrower may recover in accordance with the laws on usury.

In usurious loans, the entire obligation does not become void because of an agreement for usurious interest; the unpaid principal debt still stands and remains valid but the stipulation as to the usurious interest is void, consequently, the debt is to be considered without stipulation as to the interest.[43] The reason for this rule was adequately explained in the case of *Angel Jose Warehousing Co., Inc. v. Child Enterprises*[44]where this Court held:

In simple loan with stipulation of usurious interest, the prestation of the debtor to pay the principal debt, which is the cause of the contract (Article 1350, Civil Code), is not illegal. The illegality lies only as to the prestation to pay the stipulated interest; hence, being separable, the latter only should be deemed void, since it is the only one that is illegal.

Thus, the nullity of the stipulation on the usurious interest does not affect the lenders right to receive back the principal amount of the loan. With respect to the debtor, the amount paid as interest under a usurious agreement is recoverable by him, since the payment is deemed to have been made under restraint, rather than voluntarily.[45]

This Court agrees with the factual findings and conclusion of the appellate court, to wit:

We find the stipulated penalties, liquidated damages and attorneys fees, excessive, iniquitous and unconscionable and revolting to the conscience as they hardly allow the borrower any chance of survival in case of default. And true enough, ESTE folded up when the appellee extrajudicially foreclosed on its (ESTEs) development project and literally closed its offices as both the appellee and ESTE were at the time holding office in the same building. Accordingly, we hold that 20% penalty on the amount due and 10% of the proceeds of the foreclosure sale as attorneys fees would suffice to compensate the appellee, especially so because there is no clear showing that the appellee hired the services of counsel to effect the foreclosure; it engaged counsel only when it was seeking the recovery of the alleged deficiency.

Attorneys fees as provided in penal clauses are in the nature of liquidated damages. So long as such stipulation does not contravene any law, morals, or public order, it is binding upon the parties. Nonetheless, courts are empowered to reduce the amount of attorneys fees if the same is iniquitous or unconscionable.[46] Articles 1229 and 2227 of the New Civil Code provide that:

Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

Art. 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

In the case at bar, the amount of Three Million One Hundred Eighty-Eight Thousand Six Hundred Thirty Pesos and Seventy-Five Centavos (₱3,188,630.75) for the stipulated attorneys fees equivalent to twenty-five (25%) percent of the alleged amount due, as of the date of the auction sale on June 23, 1980, is manifestly exorbitant and unconscionable. Accordingly, we agree with the appellate court that a reduction of the attorneys fees to ten (10%) percent is appropriate and reasonable under the facts and circumstances of this case.

Lastly, there is no merit to petitioner FMICs contention that the appellate court erred in awarding an amount allegedly not asked nor prayed for by respondents. Whether the exact amount of the relief was not expressly prayed for is of no moment for the reason that the relief was plainly warranted by the allegations of the respondents as well as by the facts as found by the appellate court. A party is entitled to as much relief as the facts may warrant.[47]

In view of all the foregoing, the Court is convinced that the appellate court committed no reversible error in its challenged Decision.

WHEREFORE, the instant petition is hereby DENIED, and the assailed Decision of the Court of Appeals is AFFIRMED. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and *Buena, JJ.,* concur.

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[*] Also known in the records as Albert.

[1] Penned by Associate Justice Salvador J. Valdez, Jr., and concurred in by Associate Justices Bernardo P. Abesamis and Renato C. Dacudao, *Rollo*, pp. 80-115.

[2] Special Seventh Division.

[3] Judge Willelmo C. Fortun, *Rollo*, pp. 79-114.

[4] Records, pp. 307-333.

[5] Records, pp. 320, 334-335.

[6] Records, pp. 320, 327, 333.

[7] Other required documents were (a) an Assignment of Receivables over all the receivables of private respondent Este del Sol from the sales of all its shares/capital stock; (b) an Assignment of Realty Rights and Interests over nine (9) parcels of land with an aggregate area of approximately 767,074 square meters and more particularly described in TCT Nos. N-1370, N-1372, N-1373, N-1374, N-1375, N-1376, N-1377 and OCT No. 5615 of the Registry of Deeds for Rizal together with the land subject of Tax Declaration No. 3956 of the Land Records of Montalban, Rizal; (c) an Assignment of Subscription Rights, together with duly-executed irrevocable Voting Trust Agreement.

[8] Records, pp. 337-343.

[9] The Consultancy Agreement specifically provided that petitioner FMIC discharge essentially four (4) functions, namely, (a) render professional counseling and assistance on management issues and objectives; (b) render professional advice on planning, structuring and arranging for specific projects; (c) make recommendations to resolve unique, and/or recurring problems; (d) render services on matters related to the above functions which the client may from time to time require.

[10] TSN, February 21, 1991, pp. 13-14; Records, pp. 371-373.

[11] Records, p. 368

[12] Records, pp. 363-365.

[13] Records, pp. 369-370.

[14] TSN, September 10, 1990, pp. 9-10; Records, pp. 369, 374-387.

[15] Civil Case No. 39224 filed before then Court of First Instance of Rizal and raffled off to Branch XI thereof; Records, pp. 1-5.

[16] Records, pp. 61-69.

[17] *Rollo*, pp. 113-114.

[18] *Rollo*, p. 116.

[19] *Rollo*, pp. 33-36.

[20] United States *v.* Diaz Conde and R. de Conde 42 Phil. 767, 769 [1922].

[21] Medel *v.* Court of Appeals, 299 SCRA 481, 489 [1998]; Security Bank and Trust Company *v.* Regional Trial Court of Makati, Branch 61, 263 SCRA 483, 488 [1996].

[22] Palanca *v.* Court of Appeals, 238 SCRA 593, 601 [1994]; Article 7, Civil Code of the Philippines.

[23] Article 4, Civil Code of the Philippines.

[24] Section 3, Rule 130 of the Rules of Court.

[25] United States *v.* Constantino Tan Quingco Chua, 39 Phil. 552, 558 [1919].

[26] Records, pp. 307, 344, 358.

[27] Records, p. 348.

[28] Records, p. 324.

[29] Section 4.04 of Article IV Covenants of the Borrower of the Loan Agreement, Records, p. 321.

[30] Section 5.01 of Article V Conditions of Lending of the Loan Agreement, Records, pp. 322-323.

[31] TSNs, September 8, 1983, pp. 4-5; November 3, 1983, pp. 8-9; March 11, 1986, pp. 4-5; April 20, 1989, pp. 6-7; July 1, 1991, pp. 13-14.

[32] TSN, April 20, 1989, pp. 6-7.

[33] Records, p. 372.

[34] Records, p. 348.

[35] Records, pp. 371-373.

[36] Records, p. 334.

[37] TSNs, February 7, 1991, pp. 11-12; February 21, 1991, pp. 15-16; July 1, 1991, pp. 36-38.

[38] TSNs, January 11, 1990, pp. 11-13, 15; August 7, 1990, pp. 15-17; September 3, 1990, p. 4; July 1, 1991, pp. 36-38.

[39] TSNs, January 11, 1990, p. 11; August 7, 1990, pp. 13-16.

[40] TSNs, January 11, 1990, pp. 11-13, 15; August 7, 1990, pp. 15-17; September 3, 1990, p. 4; July 1, 1991, pp. 36-38.

[41] TSN, February 7, 1991, p. 13.

[42] 81 ALR 2d 1282; Terry Trading Corporation *v.* Barsky, 292 P 474 [1930].

[43] Private Development Corporation of the Philippines *v.* Intermediate Appellate Court, 213 SCRA 282, 287 [1992]; 13 Cal Jur 3d[Rev], Part 2, Consumer and Protection Laws 411.

[44] 23 SCRA 119, 124 [1968]; cited Briones *v.* Cammayo, 41 SCRA 404, 410 [1971].

[45] 13 Cal Jur 3d[Rev], Part 2, Consumer and Protection Laws 416, 419.

[46] Barons Marketing Corp. *v*. Court of Appeals, 286 SCRA 96, 108 [1998].

[47] UBS Marketing Corporation *v*. The Honorable Special Third Division of the Court of Appeals, *et al*., G.R. No. 130328, May 31, 2000; Schenker *v.* Gemperle, 5 SCRA 1042, 1046 [1962]; Baguioro *v.* Barrios and Tupas Vda. De Atas, 77 Phil. 120, 123-124 [1946].